Supreme Court of Texas

No. 24-0016

In re The Honorable Brian Walker,
Relator

On Petition for Writ of Mandamus

PER CURIAM

Justice Devine did not participate in the decision.

A judicial candidate filed a primary ballot application early in the filing period, paid the filing fee, and submitted a petition that facially included the number of signatures required by statute. *See* TEX. ELEC. CODE § 172.021(g). In this mandamus proceeding, relator asks us to compel the state party chair to reject the candidate's application because some of the signatures are invalid and to withdraw the chair's certification of the candidate to the Secretary of State for placement on the primary ballot. We deny relief because relator's challenge to the signature petition was not brought promptly, and, even if it had been, our precedent requires that, under circumstances like these, the challenged candidate first be given an opportunity to cure a defect in his petition signatures. As we have long and consistently held, "[t]he public interest is best served when public offices are decided by fair and

vigorous elections, not technicalities leading to default." *In re Francis*, 186 S.W.3d 534, 542 (Tex. 2006).

I

On November 14, 2023, real party in interest John Devine filed an application for a place on the 2024 Republican Party primary ballot, seeking re-election to the office of Justice, Texas Supreme Court, Place 4. Respondent Matt Rinaldi, the Chairman of the Republican Party of Texas, accepted Devine's application on December 1. Relator Brian Walker, currently Justice of the Second Court of Appeals, filed his application for a place on the ballot for the same office on December 4, and it was accepted by Chairman Rinaldi on December 14. Rinaldi has certified to the Texas Secretary of State that Devine and Walker should both appear on the ballot.

A candidate for the office of Justice of the Supreme Court must accompany the application with a petition containing at least fifty signatures from each court of appeals district. TEX. ELEC. CODE § 172.021(g). Devine's petition on its face contained many more than required. On December 27—more than six weeks after Devine filed his application—Walker sent Chairman Rinaldi a letter challenging Devine's application. Walker asserted that twenty-eight signatures from the Eighth Court of Appeals District on Devine's petition were invalid: eighteen because the signers had previously signed Walker's petition, two because they were duplicates, and eight because the signers had previously signed Walker's petition and signed Devine's more than once. A person may only sign a petition for one candidate for each office; subsequent signatures are void. *Id.* § 141.066(a), (c).

Without these signatures, Devine's petition was five short of the required number of signatures from that court of appeals district. Walker's petition contained 134 signatures from that district. Omitting those that also appeared on Devine's petition would still leave Walker's petition with many more than the number required.

When Rinaldi did not respond, Walker sent another letter on January 5, asking Rinaldi to respond within an hour. That same day, Walker filed an original petition for writ of mandamus in this Court, asserting an emergency and asking the Court to compel Chairman Rinaldi to reject Devine's application and remove him from the March primary ballot.

II

"[A]ccess to the ballot lies at the very heart of a constitutional republic." *Francis*, 186 S.W.3d at 542. Thus, "[a]s we have noted many times in recent years, provisions that restrict the right to hold office must be strictly construed against ineligibility." *Id.* at 542 & n.34 (collecting cases); *see also In re Green Party of Tex.*, 630 S.W.3d 36, 39 (Tex. 2020). We have also long held that mandamus—the method of challenge pending before us—is an extraordinary remedy, not issued solely as a matter of right, but at the discretion of the court subject to applicable legal principles. *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993).

For example, although mandamus is not an equitable remedy, its issuance is largely controlled by equitable principles. *Id.* One such principle is that "[e]quity aids the diligent and not those who slumber on their rights." *Id.* (quoting *Callahan v. Giles*, 155 S.W.2d 793, 795

(Tex. 1941)). And in the context of a mandamus petition challenging a candidate's right to be listed on the ballot, where our decisions must be read in light of the canon favoring access, one basis for denying relief necessarily arises when a challenger unreasonably delays in seeking relief against a candidate whose election filings were timely and indeed early enough to cure any identified defects.[1]

In this case, Devine filed his ballot application on November 14, 2023—almost as soon as the filing period opened—which left almost a month for further supplementation if needed. And Chairman Rinaldi accepted the filing on December 1, ten days before the filing deadline. Walker—the only person who could have known before the filing deadline about any problems with the eighteen signatures that apparently were on *both* candidates' petitions—filed his application on December 4 and then waited until December 27—weeks after the deadline had passed—before alerting anyone to the purported problem.

Walker argues that he could not challenge Devine's petition while Devine retained the ability to amend his petition. *See* TEX. ELEC. CODE § 172.0222(i) (foreclosing amendment after filing deadline). The opposite is true. Devine's right to amend, made possible by his early filing, is precisely what obligated Walker to bring such a challenge as early as possible. Under principles of equity, in light of the overriding goal of maximizing proper ballot access rather than eliminating

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[1] We do not address the bases for denying other methods of challenge not before us, such as a suit to enjoin a violation of the Election Code brought in district court more than fifty days before the primary election. *See* TEX. ELEC. CODE §§ 141.034(a), 273.081; *In re Gamble*, 71 S.W.3d 313, 315 & n.2 (Tex. 2002).

opponents through litigation, courts entertain speedy actions because they permit challenged candidates to demonstrate compliance with filing requirements. A timely challenge would advance rather than impede ballot access because it would alert all parties to any deficiencies and enable a candidate to correct them if he could. But when a party slumbers on his rights—or, indeed, does not slumber but carefully lies in wait—these principles are not advanced but impaired.

If an election opponent is interested in challenging the ballot access of a putative candidate who has filed early, that opponent must not delay in seeking the relevant election filings of that candidate and alerting the parties and authorities to any deficiencies—particularly deficiencies that, as here, only the opponent would know about, given the double-signature problem that lies at the center of the challenge. And relatedly, the appropriate filing authority—here, Chairman Rinaldi—must not delay in providing the relevant filings to anyone who requests them. Because Walker's challenge to Devine's application could have—and should have—been urged while there was an opportunity for Devine to correct any deficiencies, we conclude that the principles of equity, as applied in mandamus, foreclose the Court's ability to award relief.

III

Walker's failure to promptly pursue mandamus relief is not the only reason that such relief is unavailable. On this record, the ultimate remedy he seeks—withdrawing certification of the challenged candidate—would still be unavailable because our precedent requires that candidates who themselves have promptly filed be given an

opportunity to cure defects in petition signatures. The Election Code is silent regarding "what happens when a state chair erroneously approves a petition containing invalid signatures." *Francis*, 186 S.W.3d at 539. We have construed that silence "in favor of an opportunity to cure," thereby "avoid[ing] potential constitutional problems that might be implicated if access to the ballot was unnecessarily restricted." *Id.* at 542; *see also In re Holcomb*, 186 S.W.3d 553, 554-55 (Tex. 2006); *In re Sharp*, 186 S.W.3d 556, 557 (Tex. 2006). As we recently reiterated, this remedy "advances the interests of those in whose names elections are conducted—the people." *Green Party*, 630 S.W.3d at 39 (quoting *Francis*, 186 S.W.3d at 542).

As described in *Francis*, this opportunity extends to "early filings that allow time for corrections after the [party] chair's review," thereby giving candidates "the same opportunity to cure as a proper review before the filing deadline would have allowed them." 186 S.W.3d at 541, 542. And it extends to certain defects—including duplicate signatures—that the candidate shows he can remedy within that time frame. *Id.* at 541-43; *Holcomb*, 186 S.W.3d at 555.

Here, Devine filed his application and petition three days after the filing period opened. And in response to Walker's challenge, Devine provided twenty-three additional signatures from the Eighth Court of Appeals District, which he collected before the filing deadline and contends are non-duplicative and sufficient to cure the deficiencies relator alleges. Like the challenger in *Holcomb*, Walker does not dispute these points. 186 S.W.3d at 555.

Instead, Walker argues that *Francis*, *Sharp*, and *Holcomb* no longer apply because the Legislature amended the Election Code in 2011 to provide that after the primary filing deadline, "a candidate may not amend" and a filing authority may not accept an amendment to" either an "application" or a "petition in lieu of a filing fee." TEX. ELEC. CODE §§ 141.032(g), 141.062(c), 172.0222(i). According to Walker, these provisions also have the effect of barring a court from providing an opportunity to cure as an equitable remedy. *Compare In re Anthony*, 642 S.W.3d 588, 591 (Tex. 2022), *with Green Party*, 630 S.W.3d at 40. We express no view on that issue today.

But even if Walker were correct about the effect of these provisions, his argument fails because the provisions do not address either amendment or cure of a petition submitted *in addition to* a filing fee, which is what Devine filed here. TEX. ELEC. CODE § 172.021(e), (g) (providing that a candidate for certain judicial offices "who chooses to pay the filing fee must also accompany the application with a petition" meeting certain requirements). The Election Code generally treats the application and the petition separately.[2]

[2] *See, e.g.*, TEX. ELEC. CODE §§ 141.031-141.0311 (defining contents of application without listing petition), 172.021(g) (requiring that petition "accompany" application). The Code expressly provides that a petition accompanying an application "is considered part of the application" in connection with the review process, though "the petition is not considered part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements for one document may not be remedied by the contents of the other document." *Id.* §§ 141.032(c), 172.0222(e). But as we have explained, the 2011 prohibitions against amendment after the filing deadline do not refer to a petition filed in addition to a filing fee but only to "an application filed

For these reasons, no statute has clearly superseded our cases requiring that a candidate in circumstances like these be given an opportunity to cure defects in a petition submitted in addition to a filing fee. The facts here fit within the scope of this longstanding cure remedy, and there is no dispute that Devine can cure the defects Walker identifies. Thus, if Walker had filed his mandamus petition promptly, the proper initial remedy would have been abatement for an opportunity to cure, not withdrawal of the chairman's certification of Devine as a candidate.

Because Walker failed to seek mandamus relief promptly and would not be entitled to the relief sought if he had, we deny the petition.

OPINION DELIVERED: January 11, 2024

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under Section 141.031," or to "an application filed under Section 172.021," or to "a petition [filed] in lieu of a filing fee." *Id.* §§ 141.032(g), 141.062(c), 172.0222(i). None of these provisions addresses whether compliance can be achieved by amendment or cure when a candidate files a petition in addition to a filing fee, as required for the judicial office sought by the candidates in this case. And as discussed, these provisions must be strictly construed against ineligibility. The signature requirements of Section 172.021(g) are applicable only to the petition. Thus, the petition is not considered part of the application for purposes of determining compliance with the signature requirements—including whether compliance can be achieved by amendment or cure.